



**DIVISION OF WATER POLLUTION CONTROL
401 CHURCH STREET
L & C ANNEX 6TH FLOOR
NASHVILLE TN 37243-1534**

January 11, 2008

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0976 1172**

James Houston
1637 Downtown West Blvd, Suite 6
Knoxville, TN 37919

Subject: Director's Order No. WPC07-0267
Bradley County, Tennessee

Dear Houston:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, please call Mr. Eric Roberts at (615) 532-0685 or by E-mail at Eric.Roberts@state.tn.us.

Sincerely,

Patrick Parker
Manager, Enforcement and Compliance Section

CER

cc: DWPC - Chattanooga EFO
Nashville Central Office - Enforcement and Compliance Files

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
)	
EMERALD HILLS, INC.)	
)	
)	
)	
RESPONDENT)	CASE NO. WPC07-0267

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

II.

Emerald Hills Inc., (hereinafter the "Respondent") is a corporation licensed to conduct business in the State of Tennessee and is the owner of a residential development located on Highway 74 in Bradley County, Tennessee (hereinafter the "site"). Service of

process may be made on the Respondent through James Houston, Registered Agent at, 1637 Downtown West Boulevard Suite 6, Knoxville, Tennessee, 37919.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondent has violated the Act.

V.

Candies Creek and its unnamed tributaries are referred to herein, as “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, “Use Classifications for Surface Waters,” Candies Creek and its unnamed tributaries have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife. Additionally, Candies Creek has been listed as impaired for loss of biological integrity due to siltation from streambank modifications and physical substrate habitat alterations due to discharges from an Municipal Separate Storm Sewer System (MS4) area.

VI.

Tennessee Code Annotated §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), site-specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

FACTS

VII.

On March 28, 2005, the Respondent submitted a NOI, SWPPP, and an appropriate fee to obtain coverage under the TNCGP. On May 23, 2005, the division issued the Respondent coverage under the TNCGP. The coverage became effective on May 23, 2005, and expires upon the division's receipt of a Notice of Termination or upon the expiration of the general permit on May 30, 2010. The permit authorizes the Respondent to discharge storm water runoff associated with construction activity to the unnamed tributary of Candies Creek, in accordance with the TNCGP terms and conditions.

VIII.

On October 31, 2007, division personnel conducted a site inspection and observed that Erosion Prevention and Sediment Control (EPSC) measures which had been implemented were inadequate, and not in accordance with the SWPPP. In addition, division personnel observed that the Respondent allowed a sediment release from the site, which migrated into waters of the state.

IX.

On November 1, 2007, the division issued a Notice of Violation (NOV) to the Respondent for violations observed during the October 31, 2007, site inspection. The NOV required the Respondent to, within 14 days receipt of the NOV, install appropriate EPSC measures to prevent further sediment loss from the site. In addition, the NOV

required the Respondent to submit in writing, within 5 days, the name of the individual conducting inspections of the EPSC measures. Furthermore, the NOV required the Respondent to post the Notice of Coverage (NOC) on site as required by the permit.

VIOLATIONS

X.

By failing to comply with the terms and conditions of the TNCGP as described herein, the Respondent has violated T.C.A. §§69-3-108(b), 114(b), which state in part:

T.C.A. §69-3-108(b):

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. §69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish,

or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

ORDER AND ASSESSMENT

XI.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall implement appropriate EPSC measures to ensure that no eroded material leaves the site and enters waters of the state. Documentation, including photographic evidence, that EPSC measures have been implemented, is to be sent within FIFTEEN (15) DAYS of receipt of this Order and Assessment to the manager of the Division of Water Pollution Control located at the Chattanooga Environmental Field Office (Ch-EFO) at 540 McCallie Avenue, Chattanooga, Tennessee, 37402.
2. The Respondent shall maintain EPSC measures until grade and permanent vegetative cover are established.
3. The Respondent is hereby assessed a CIVIL PENALTY in the amount of SIX THOUSAND DOLLARS (\$3,500.00), payable as follows:
 - a. The Respondent shall pay ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) to the division within THIRTY (30) DAYS of receipt of this Order.

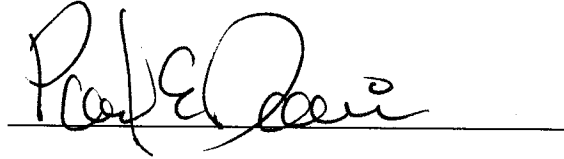
- b. The Respondent shall pay ONE THOUSAND DOLLARS (\$1,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.
 - c. The Respondent shall pay ONE THOUSAND DOLLARS (\$1,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.
- 4. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of THIRY (30) DAYS in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

The director will reply to the Respondent's request in writing. Should the Respondent fail to meet the requirement by the extended date, any associated CIVIL PENALTY shall become due THIRTY (30) DAYS thereafter.

Issued by the Director of the Division of Water Pollution Control on behalf of the
Commissioner of the Tennessee Department of Environment and Conservation on this
20th day of February, 2008.

A handwritten signature in black ink, appearing to read "Paul E. Davis", is written over a horizontal line.

Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel (OGC) a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence

at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the “Treasurer, State of Tennessee,” and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.